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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,502	07/08/2003	Charles Bradley Green	25040.0912	9230
29052	7590	05/26/2006		
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				
			EXAMINER ALEXANDER, REGINALD	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,502

Applicant(s)

GREEN, CHARLES BRADLEY

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 31-39 is/are pending in the application.
- 4a) Of the above claim(s) 31-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-25 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8, 11/2003</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-25 and 32-39 in the reply filed on 15 March 2006 is acknowledged.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, drawn to a milk foaming device, classified in class 99, subclass 323.1.
- II. Claims 32-39, drawn to a beverage system and sanitizing unit, classified in class 99, subclass 275.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because there is no sanitizing fluid source. The subcombination has separate utility such as with a beverage system not needing a steam source.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Daniel Warren on 15 May 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 9, 10, 12-15, 20, 21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 4445436.

The is disclosed in the German reference a milk foaming device, comprising: a milk inlet system, including a disposable hose 14, for pressurizing milk from a milk source; an air inlet system, including a disposable hose 16, compressed air source (pump) and valve arrangement 119, 120, for pressurizing air from the air source; a steam inlet system, including a disposable hose 9; a mixing area 11 to mix the milk, air and steam; an expansion area 3; a hose connector (connected to the expansion area) for connecting the milk and air inlet systems, the connector including a three-way connection; and a diffuser 5, including an insert and spout, to gather the flow of foamed milk to be dispensed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4445436 in view of Hourizadeh.

Hourizadeh discloses that it is known in the art to use a pump 140 to pressurize and supply milk to a foaming device and provide a sanitation system 50, 95 to provide hot water to the foaming device.

It would have been obvious to one skilled in the art to provide the device of DE 4445436 with the sanitation system taught in Hourizadeh, for the purpose of cleaning the foaming device.

It would have been obvious to one skilled in the art to provide the device of DE 4445436 with the milk pump taught in Hourizadeh, in order to provide the milk at a higher pressure.

In regards to the use of a peristaltic pump, it is the opinion of the examiner that the pump disclosed in Hourizadeh is a functional equivalent to that claimed, and would perform equally as well.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4445436 in view of Detsch et al.

Detsch discloses that it is known in the art to use a microfilter in the path of an air hose providing compressed air.

It would have been obvious to one skilled in the art to provide the device of DE 4445436 with the microfilter taught in Detsch, in order to clean the air being provided to the mixing area.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4445436 in view of Paoletti.

Paoletti discloses that it is known in the art to provide mixture nozzle 5 with a hollow nozzle block 3, the nozzle having a plurality of protrusions 5C positioned thereon, the protrusion forming with an inner wall of the block a plurality of channels (orifice areas).

It would have been obvious to one skilled in the art to modify the mixing area of DE 4445436 with that taught in Paoletti and provide a mixing nozzle, in order to more thoroughly mix the air, steam and milk.

Allowable Subject Matter

Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

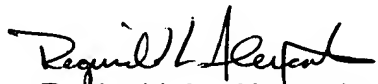
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Anderson, Pugh and Koga et al. are cited for their disclosure of the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla
19 May 2006


Reginald L. Alexander
Primary Examiner
Art Unit 1761